

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NADINE GOITIA)	
Claimant)	
VS.)	
)	Docket No. 233,983
SOUTHWEST DEVELOPMENTAL SERVICES, INC.)	
Respondent)	
AND)	
)	
COMMERCIAL UNION INSURANCE COMPANY)	
Insurance Carrier)	

NADINE GOITIA)	
Claimant)	
VS.)	
)	Docket No. 245,196
BETHPHAGE/ADVENT SERVICES, INC.)	
Respondent)	
AND)	
)	
SENTRY INSURANCE)	
Insurance Carrier)	

ORDER

Respondent in Docket No. 233,983, Southwest Developmental Services, Inc. (Southwest) and its insurance carrier Commercial Union Insurance Company appealed the preliminary Order for Compensation dated September 23, 1999 entered by Administrative Law Judge Pamela J. Fuller.¹

ISSUES

Judge Fuller ordered respondent Southwest and its insurance carrier to pay temporary total disability compensation commencing July 12, 1999 and to provide medical

¹ Commercial Union was the insurance carrier for Southwest through December 31, 1997. Sometime thereafter Southwest was purchased by Bethphage/Advent Services, Inc. and on January 1, 1999 Sentry became the insurance carrier.

treatment, specifically pool therapy. In its Application for Review by Workers' Compensation Appeals Board, respondent Southwest raised the following issues:

1. Did the Claimant meet with accidental injury while working for Southwest Developmental Services, Inc., and/or Bethphage Advent?
2. Whether Claimant's injuries arose out of and in the course of employment with Southwest Developmental Services?
3. If the Claimant met with personal injury by accident, what is the proper date of injury and which Respondent is responsible?
4. Did the Claimant file timely written claim?²

But in its brief to the Board, respondent Southwest states: "It is undisputed that the claimant met with personal injury by accident on November 30, 1995 when she was lifting a patient and injured her low back."

Bethphage/Advent Services, Inc. (Advent) and its insurance carrier Sentry Insurance argues this appeal by Southwest fails to raise a jurisdictional issue.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds the ALJ's order should be affirmed.

The claimant, Nadine Goitia, testified that she was first injured while lifting a patient on November 30, 1995.⁴ That accident resulted in an injury to her back. Claimant also alleges a series of repetitive trauma injuries to her bilateral upper extremities during the period from January 1999 through May 17, 1999.⁵

Claimant first served her written claim for the November 30, 1995 injury on May 26, 1998. As this was more than 200 days from the date of accident, claimant relies

² K.S.A. 44-520a.

³ See K.S.A. 1998 Supp. 44-534a(a)(2) and K.S.A. 1998 Supp. 44-551(b)(2)(A).

⁴ The November 30, 1995 accident is the subject of the claim bearing Docket No. 233,983.

⁵ This series of repetitive trauma accidents is the subject of Docket No. 245,196.

upon her receiving ongoing medical treatment (compensation) to extend the time for serving written claim.⁶

Claimant received authorized medical treatment, primarily from Dr. Jack Reese but most recently from Dr. Lawrence A. Vierra. After claimant saw Dr. Reese on October 9, 1996 she was released to return to work with restrictions but no additional treatment or follow-up appointments were scheduled. Respondent argues that because claimant did not seek medical care again until November 20, 1997, when she returned to Dr. Reese, her May 26, 1998 written claim is untimely.⁷ But claimant testified she remained symptomatic during this time period and, although she sought additional treatment, respondent delayed in authorizing it. The Appeals Board, therefore, finds that claimant's treatment had not ended in October 1996, and the written claim was timely.⁸

Claimant continued to work within the restrictions given her by Dr. Reese until Dr. Vierra took her off work in May of 1999. Thereafter, in July, when claimant attempted to return to work she was told by respondent that they could no longer accommodate her restrictions.

Claimant testified her work aggravated her back problems even though she was working within her restrictions. Also, she developed neck and upper extremity problems. In November of 1998 she was diagnosed with probable bilateral carpal and cubital tunnel syndromes.

The Board has held in the past that date of accident and disputes between insurance carriers concerning which of them is to pay the cost of ordered preliminary hearing benefits are not jurisdictional issues.⁹ But an issue concerning which of two respondents is liable for benefits is jurisdictional. The record is not clear as to when the ownership of respondent changed, but counsel suggests this occurred on January 1, 1999 when Sentry became the insurance carrier. The central issue therefore appears to be whether claimant suffered an aggravation of her back injury after claimant's employer changed from Southwest to Advent. Based upon the record compiled to date, the Appeals

⁶ Sparks v. Wichita White Truck Trailer Center, Inc., 7 Kan. App. 383, 642 P.2d 574 (1982).

⁷ See Shields v. J.E. Dunn Construction Company, 24 Kan. App. 2d 382, 946 P.2d 94 (1997); Lawrence v. Cobler, 22 Kan. App. 2d 291, 294, 915 P.2d 157, *rev. denied* 260 Kan. 994 (1996).

⁸ See Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 515, 516 P.2d 1008 (1973); Shields, *supra* at Syl ¶ 3.

⁹ See, e.g., Ireland v. Ireland Court Reporting, WCAB Docket Nos. 176,441 & 234,974 (Feb. 1999); Linville v. Grandview Products Co., Inc., WCAB Docket No. 230,739 (June 1998); Celuch v. Luce Press Clippings, Inc., WCAB Docket Nos. 214,959 & 222,711 (Jan. 1998); and Siyavong v. Kice Industries, Inc., WCAB Docket No. 215,916 (July 1997).

Board finds that claimant did not suffer an intervening injury. Her current back condition is a direct and natural consequence of the November 30, 1995 injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Compensation dated September 23, 1999 entered by Administrative Law Judge Pamela J. Fuller should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Peter G. Olson, Liberal, KS
Kendall R. Cunningham, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director